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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,975	12/21/2004	Timothy Ian Moore		2906
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JOHN V STEWART 1308 HENRY BALCH DRIVE ORLANDO, FL 32810				
			EXAMINER	
			PHAM, HUONG Q	
ART UNIT		PAPER NUMBER		
3772				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/518,975

Applicant(s)

MOORE, TIMOTHY IAN

Examiner

HUONG Q. PHAM

Art Unit

3772

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-13, 15-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-13, 15-19, 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 17, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As for claims 1, 17 and 21, the meaning of the phrase "for non-adjustably registering the shell vertically with respect to the person 's leg" is unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 9-13, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Sears (654,286) .

As for claim 1 , Sears teaches a shell A, C for an ankle brace , the shell being semi-rigid (note that "semi-rigid" is a relative term) and having an inner surface shaped capable of being shaped to conform to a side surface of a person's leg between an upper extent above the person's ankle bone and a lower extent below the person's ankle bone but

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above the base of the heel , and between a forward extent towards the front of the person's leg and a rearward extent towards the rear of the person's leg, the shell having a registration portion shaped and having capability to register the shell with respect to the person's ankle bone, the registration portion having portions capable of engaging with the protruding part of the person's ankle bone from below, from in front of, from behind and from above the person's ankle 's bone for registering the shell in the directions of the four extents with respect to the person's ankle's bone, the shell being devoid of any feature for extending beneath the person's heel " for non-adjustably registering the shell vertically with respect to the person's leg", and the shell being bifurcated by a slot extending from the upper extent towards a registration portion.

As for claim 4, note that the registration portion of Sears is provided by a hole capable of snugly receiving the protruding part of the ankle bone (note that the size of the ankle bone can vary between different person) .

As for claim 5, note that the slot opens into the hole.

As for claim 6, note that the slot stops short of the hole.

As for claim 7, note that the registration portion includes portion which is capable of providing by a recess in the inner surface of the shell for receiving and covering the protruding part of the ankle bone (note that the size of the ankle bone can vary between different person).

As for claim 9, note that the slot of Sears "extends as far as the recess".

As for claim 10, note that the slot of Sears extends at least partly into the recess.

As for claim 11, note that the registration portion of Sears has a portion which is a non-circular outline.

As for claim 12, note that the shell has a generally uniform thickness.

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As for claim 13, note the adjustably strapping means E, D of Sears.

As for claim 19, note column 1, lines 15-16 of Sears.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 are rejected under 35 U.S.C. 103(a) as being obvious over Sears (654,286). Sears substantially discloses the invention as claimed; note the comments above for the teaching of Sears.

As for claims 2 and 3, while Sears does not explicitly mention the dimensions of the slot, however, note that the width of the slot above the registration portion is approximately about at least 5 mm and is approximately about at most 30 mm.

Note that the provision for the dimension of the slot is well within the realm of one ordinary skill in the art, and does not provide any unobvious result, and therefore is not patentable over prior art. Thus, at the time of the invention, it would have been obvious to one having ordinary skill in the art to specifically choose the width above the registration portion is approximately about at least 5 mm and is approximately about at most 30 mm as an obvious matter of design choice, since applicant has not disclosed that the claimed range for the width solves any stated problem or is for any particular purpose.

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Claims 15, 16 and 21-22 are rejected under 35 U.S.C. 103(a) as being obvious over Sears (654,286) in view of Wilkerson (4,590,932) and/or Nelson (4,527,556).

Sears substantially discloses the invention as claimed; note the comments to the rejection of claim 1 for the teaching of Sears.

As for claims 15-16 and 16- 22, although Sears teaches a projecting region for his device, Sears does not mention about the extent of the projecting region of his device.

Wilkerson teaches in figures 1 and 3 that the projecting region projects by approximately a maximum distance of about 60 mm + 10 mm from the tip of the person's ankle bone .

Nelson teaches in figure5 that the projecting region projects by approximately a maximum distance of about 60 mm + 10 mm from the tip of the person's ankle bone.

In view of the teachings of Wilkerson and/or Nelson, it would have been obvious to one ordinary skill in the art at the time the invention was made to make the projection region of device of Sears projecting by approximately a maximum distance of about 60 mm + 10 mm from the tip of the person's ankle bone in order to cover the person 's anterior talofibular ligament.

Note that the provision for the dimension of the projecting region in order to cover the person 's anterior talofibular ligament is well within the realm of one ordinary skill in the art.

Claims 17-18 are rejected under 35 U.S.C. 103(a) as being obvious over Sears (654,286) in view of McEwen (332,727).

Note all the comments above for the teaching of Sears.

As for claim 17, Sears teach every claimed feature of claim 17 except for the additional (medial or lateral) shell as recited .

McEwen teaches an ankle support with both medial and lateral shells D (figure 2). In view of the teaching of McEwen, it would have been obvious to one ordinary skill in the art at the time the invention was made to provide the device of Sears with both medial and lateral shells in order to provide support for both ankles of a person.

As for claim 18, note the adjustable strap D of Sears.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The patent to Neal (5,000,195) is cited to show the ankle support having the registration portion with the shape and slot as recited (figure 1).

The patent to Neal (4,886,053) is cited to show the ankle support having the registration portion with the shape and slot as recited (the front page).

The patent to Wallace (260,069)) is cited to show the ankle support having the registration portion with the shape and slot as recited (figure 6).

The patent to Restorer (5,527,269) is cited to show the ankle support having the registration portion with the shape and slot as recited (figure 1).

The patent to Breuer (660,885) is cited to show the adjustable means to adjust the length of the strap .

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **HUONG Q. PHAM** whose telephone number is (571)272-4980. The examiner can normally be reached on M-W, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272 - 4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 11, 2008

/Huong Q. Pham/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772